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September 18, 2017

Submitted via ECF

The Hon. Analisa Torres
United States District Judge
United States District Court, Southern District of New York
500 Pearl St.
New York, NY 10007-1312

**Re: *Gregorio v. Premier Nutrition Corp.*, Case 1:17-cv-05987-AT
Defendant's Request for Adjournment of Initial Pretrial Conference, Extension
of Time for Rule 26 Initial Disclosures and Discovery Plan, and Adjournment of
Pending Discovery Deadlines**

Dear Judge Torres:

We represent Defendant Premier Nutrition Corp. ("Premier Nutrition") in the above-referenced matter, along with Faegre Baker Daniels LLP.

Your Honor has scheduled an Initial Pretrial Conference in this matter for October 5, 2017. Premier Nutrition's deadline to answer or otherwise respond to Plaintiff's complaint is October 16, 2017. In accordance with Rule III(B) of Your Honor's Individual Practices, Premier Nutrition plans to file a pre-motion letter (in anticipation of a motion to dismiss Plaintiff's complaint in its entirety) by that date. To conserve the resources of the Court and the parties, Premier Nutrition respectfully requests that the Initial Pretrial Conference set for October 5 be adjourned.

Premier Nutrition also respectfully requests that the Court extend the deadline for the parties to submit their proposed discovery plan under FRCP 26 (currently due September 28, 2017) and to make their initial disclosures until at least 14 days after the Court issues an order on Premier Nutrition's forthcoming motion to dismiss. Without knowing the ultimate scope of this case and which of Plaintiff's claims, if any, will survive Premier Nutrition's motion to dismiss, establishing a discovery plan is premature, the extent of any initial disclosures (or whether they

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will be necessary) is uncertain, and the Initial Pretrial Conference and Rule 26 filings would be a waste of judicial resources at this early juncture.

In addition, Premier Nutrition respectfully requests that the Court adjourn all discovery deadlines until after the Court makes a determination on Premier Nutrition's motion to dismiss. On September 12, 2017, the parties held a telephone conference to discuss their submission of a civil case management plan and proposed scheduling order, as required by FRCP 26(f)(3). At that conference, counsel for Premier Nutrition informed Plaintiff's counsel that Premier Nutrition intends to file a motion to dismiss, and in the interest of efficiency, judicial economy, and reduction of litigation costs, suggested that no discovery be conducted until the resolution of that motion. Plaintiff disagreed with that position, and served discovery requests, including 10 broad interrogatories and 27 requests for production, on Premier Nutrition within minutes of the conclusion of that phone conference. Per FRCP 33(b)(2) and 34(b)(2)(A), Premier Nutrition's responses to those requests are due October 12, 2017—several days before Premier Nutrition's deadline to respond to Plaintiff's complaint, at which time Premier Nutrition will be filing its pre-motion letter.

Premier Nutrition's position is that any discovery conducted prior to the resolution of its forthcoming motion to dismiss could potentially lead to a waste of the parties' time and resources, as it is unclear which of Plaintiff's claims, if any, will survive the motion to dismiss. This Court has routinely granted motions to adjourn discovery deadlines until after the motion to dismiss stage. *See, e.g., Chrysler Capital Corp. v. Century Power Corp.*, 137 F.R.D. 209, 211 (S.D.N.Y. 1991) (staying discovery until decision on motion to dismiss); *Johnson v. N.Y. Univ. Sch. of Educ.*, 205 F.R.D. 433, 434 (S.D.N.Y. 2002) (same); *Spencer Trask Software & Info. Servs., LLC v. RPost Intern Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002) ("proceeding with discovery while the motion to dismiss is pending would unnecessarily drain the parties' resources").

No previous requests have been made for adjournment or extension. We have discussed these issues with Plaintiff's counsel. They do not agree to postpone discovery or upcoming deadlines until after the resolution of Premier Nutrition's forthcoming motion to dismiss on the grounds that discovery at this stage was not premature.

This motion is made in good faith and will not substantially delay the proceedings or cause prejudice to any party. Furthermore, a stay of discovery until after the Court's order on Premier Nutrition's motion to dismiss would not prejudice Plaintiff, as this litigation is in its very earliest stages, a scheduling order has not yet been entered, and Defendant has not yet answered or otherwise responded to Plaintiff's complaint.

In summary, Premier Nutrition respectfully requests that the Court (1) adjourn the date of the Initial Pretrial Conference; (2) extend the deadline for the parties to present their Rule 26

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discovery plan and to serve their Rule 26 initial disclosures until at least 14 days after the Court's order on Premier Nutrition's motion to dismiss; and (3) adjourn all other discovery deadlines until after that same order.

Thank you for your attention to this matter.

Respectfully submitted,

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s/ Joshua K. Leader

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cc: All counsel of record (*via ECF*)